

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2009-0126-PWS-E TCEQ ID: RN102320991 CASE NO.: 37075**  
**RESPONDENT NAME: KBL MANAGEMENT, INC.**

Page 1 of 2

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

**SITE WHERE VIOLATION(S) OCCURRED:** 2701 Prairie Creek Road, Marble Falls, Burnet County

**TYPE OF OPERATION:** Public water supply system

**SMALL BUSINESS:** ☒ Yes ☐ No

**OTHER SIGNIFICANT MATTERS:** There are no complaints. There is no record of additional pending enforcement actions regarding this facility location

**INTERESTED PARTIES:** No one other than the ED and the Respondent expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired September 21, 2009. No comments were received.

**CONTACTS AND MAILING LIST:**

TCEQ Attorney: Ms. Tammy L. Mitchell, Litigation Division, MC 175, (512) 239-0736  
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Mr. Tel Croston, Water Enforcement Section, MC 169, (512) 239-5717

TCEQ Regional Contact: Ms. Carolyn Runyon, Austin Regional Office, MCR-11, (512) 339-2929

Respondent: Ms. Kym Benson Lifshutz, President, KBL Management, Inc., 680 E. Basse Rd, Apt. 116, San Antonio, Texas 78209

Respondent's Attorney: Not represented by counsel on this enforcement matter.

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None.</p> <p><b>Date of Investigation Relating to this Case:</b> January 1, 2009</p> <p><b>Date of NOE Relating to this Case:</b> January 12, 2009</p> <p><b>Background Facts:</b> The EDPRP was filed June 3, 2009. The Respondent filed an answer and the case was referred to SOAH. Settlement was achieved and a signed Agreed Order was received on July 30, 2009. The payment plan was revised at the Respondent's request, and the revised Agreed Order was received on September 3, 2009.</p> <p><b>Current Compliance Status:</b> No outstanding Technical Requirements.</p> <p><b>PWS:</b> Failed to collect routine coliform samples for the months of October, November and December 2007, and January through December 2008; and failed to provide public notice of the failure to collect those samples [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B) and TEX. HEALTH &amp; SAFETY CODE § 341.033(d)]</p>	<p><b>Total Assessed:</b> \$7,018</p> <p><b>Total Deferred:</b> \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid/Due to General Revenue:</b> \$1,501/\$5,517</p> <p>The Respondent paid \$1,501 of the administrative penalty. The remaining amount of \$5,517 shall be payable in one payment of \$179 and 34 subsequent monthly payments of \$157 each.</p> <p><b>Site Compliance History Classification</b> N/A</p> <p><b>Person Compliance History Classification</b> N/A</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> <p><b>Findings Order Justification:</b> More than three NOVs for the same violation.</p>	<p>The Executive Director recognizes that the Respondent sold the facility as of July 1, 2009.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	20-Jan-2009
	<b>PCW</b>	27-Jan-2009
	<b>Screening</b>	27-Jan-2009
	<b>EPA Due</b>	2-Jun-2009

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	KBL Management, Inc.		
<b>Reg. Ent. Ref. No.</b>	RN102320991		
<b>Facility/Site Region</b>	11-Austin	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	37075	<b>No. of Violations</b>	1
<b>Docket No.</b>	2009-0126-PWS-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Public Water Supply	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Tel Croston
		<b>EC's Team</b>	Enforcement Team 2
<b>Admin. Penalty \$ Limit Minimum</b>	\$50	<b>Maximum</b>	\$1,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** \$3,750

## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** 65.0% Enhancement **Subtotals 2, 3, & 7** \$2,437

**Notes** The Respondent was issued 13 Notices of Violations ("NOVs") for the same or similar violations in the past five years.

**Culpability** No 0.0% Enhancement **Subtotal 4** \$0

**Notes** The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5** \$0

**Economic Benefit** 0.0% Enhancement\* **Subtotal 6** \$0

Total EB Amounts \$831  
Approx. Cost of Compliance \$750

\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** \$6,187

**OTHER FACTORS AS JUSTICE MAY REQUIRE** 13.4% **Adjustment** \$831

Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes** Enhancement recommended for recovery of avoided costs of compliance.

**Final Penalty Amount** \$7,018

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** \$7,018

**DEFERRAL** 0.0% Reduction **Adjustment** \$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

**Notes** No deferral is recommended for Findings Orders.

**PAYABLE PENALTY** \$7,018

<b>Screening Date</b>	27-Jan-2009	<b>Docket No.</b>	2009-0126-PWS-E	<b>PCW</b>
<b>Respondent</b>	KBL Management, Inc.			Policy Revision 2 (September 2002)
<b>Case ID No.</b>	37075			PCW Revision October 30, 2008
<b>Reg. Ent. Reference No.</b>	RN102320991			
<b>Media [Statute]</b>	Public Water Supply			
<b>Enf. Coordinator</b>	Tel Croston			

**Compliance History Worksheet**

>> Compliance History Site Enhancement (Subtotal 2)		Enter Number Here	Adjust.
Component	Number of...		
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	13	65%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%
<b>Adjustment Percentage (Subtotal 2)</b>			65%
<b>&gt;&gt; Repeat Violator (Subtotal 3)</b>			
N/A			<b>Adjustment Percentage (Subtotal 3)</b> 0%
<b>&gt;&gt; Compliance History Person Classification (Subtotal 7)</b>			
N/A			<b>Adjustment Percentage (Subtotal 7)</b> 0%
<b>&gt;&gt; Compliance History Summary</b>			
<b>Compliance History Notes</b>	The Respondent was issued 13 Notices of Violations ("NOVs") for the same or similar violations in the past five years.		
<b>Total Adjustment Percentage (Subtotals 2, 3, &amp; 7)</b>			65%

<b>Screening Date</b>	27-Jan-2009	<b>Docket No.</b>	2009-0126-PWS-E	<b>PCW</b>
<b>Respondent</b>	KBL Management, Inc.	Policy Revision 2 (September 2002)		
<b>Case ID No.</b>	37075	PCW Revision October 30, 2008		
<b>Reg. Ent. Reference No.</b>	RN102320991			
<b>Media [Statute]</b>	Public Water Supply			
<b>Enf. Coordinator</b>	Tel Croston			
<b>Violation Number</b>	1			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B) and Tex. Health & Safety Code § 341.033(d).			
<b>Violation Description</b>	Failed to collect routine coliform samples for the months of October, November and December 2007, and January through December 2008; and failed to provide a public notification of the failure to sample for the months of October, November and December 2007, and January through December 2008, as documented in a record review conducted on January 1, 2009.			
<b>Base Penalty</b>				\$1,000

**>> Environmental, Property and Human Health Matrix**

	Release	Major	Moderate	Minor	
OR	Actual				
	Potential	x			Percent <span style="border: 1px solid black; padding: 0 10px;">25%</span>

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
					Percent <span style="border: 1px solid black; padding: 0 10px;">0%</span>

**Matrix Notes**

Failure to sample may allow a significant amount of undetected contaminants which exceed levels that are protective of human health or environmental receptors to be distributed to the public for human consumption.

**Adjustment** \$750

**\$250**

**Violation Events**

Number of Violation Events	<span style="border: 1px solid black; padding: 0 10px;">15</span>	<span style="border: 1px solid black; padding: 0 10px;">457</span>	Number of violation days
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	daily	<span style="border: 1px solid black; padding: 0 10px;"></span>	
	weekly	<span style="border: 1px solid black; padding: 0 10px;"></span>	
mark only one with an x	monthly	x	
	quarterly	<span style="border: 1px solid black; padding: 0 10px;"></span>	
	semiannual	<span style="border: 1px solid black; padding: 0 10px;"></span>	
	annual	<span style="border: 1px solid black; padding: 0 10px;"></span>	
	single event	<span style="border: 1px solid black; padding: 0 10px;"></span>	

**Violation Base Penalty** \$3,750

Fifteen monthly events are recommended, based on one event for each month samples were not taken.

**Good Faith Efforts to Comply**

	0.0%	Reduction	
	Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary	<span style="border: 1px solid black; padding: 0 10px;"></span>	<span style="border: 1px solid black; padding: 0 10px;"></span>	
Ordinary	<span style="border: 1px solid black; padding: 0 10px;"></span>	<span style="border: 1px solid black; padding: 0 10px;"></span>	
N/A	x	(mark with x)	

**Notes**

The Respondent does not meet the good faith criteria for this violation.

**Violation Subtotal** \$3,750

**Economic Benefit (EB) for this violation**

<b>Estimated EB Amount</b>	<span style="border: 1px solid black; padding: 0 10px;">\$831</span>
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**Violation Final Penalty Total** \$7,018

**This violation Final Assessed Penalty (adjusted for limits)** \$7,018

## Economic Benefit Worksheet

**Respondent** KBL Management, Inc.  
**Case ID No.** 37075  
**Reg. Ent. Reference No.** RN102320991  
**Media** Public Water Supply  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$750	1-Oct-2007	31-Dec-2008	2.17	\$81	\$750	\$831
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided cost includes the amount necessary to conduct routine sampling and to provide public notice (estimated at \$25 per sample and \$25 per month for public notice) for 15 months. The beginning date is the first month sampling was required. The end date is the last month the sampling was not conducted.

Approx. Cost of Compliance

\$750

TOTAL

\$831

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603436692 KBL Management, Inc. Classification: Rating:  
Regulated Entity: RN102320991 PRAIRIE CREEK ESTATES Classification: Site Rating:  
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 0270016  
Location: 2701 PRAIRIE CREEK RD, Burnet County, TX, 78654  
TCEQ Region: REGION 11 - AUSTIN  
Date Compliance History Prepared: January 26, 2009  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: January 26, 2004 to January 26, 2009  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Tel Croston Phone: 239 - 5717

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A
- 6.

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	07/26/2004	(284060)
2	01/07/2009	(722171)
3	01/12/2009	(723049)
4	01/12/2009	(723052)
5	01/12/2009	(723054)
6	01/12/2009	(723056)
7	01/12/2009	(723235)
8	01/12/2009	(723237)
9	01/12/2009	(723240)
10	01/12/2009	(723246)
11	01/12/2009	(723251)
12	01/12/2009	(723255)
13	01/12/2009	(723258)
14	01/12/2009	(723266)
15	01/12/2009	(723276)
16	01/12/2009	(723281)
17	01/13/2009	(723429)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

1

Date: 01/31/2008 (722171) CN603436692  
 Self NO Classification Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
 Description: TCR Routine Monitoring Violation 10/2007 - Failure to collect any routine monitoring sample(s).

Self NO Classification Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
 Description: TCR PN Routine Monitoring Violation 10/2007 - Failure to post public notice for not collecting any routine monitoring sample(s).

2

Date: 02/14/2008 (723049) CN603436692  
 Self NO Classification Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
 Description: TCR Routine Monitoring Violation 11/2007 - Failure to collect any routine monitoring sample(s).

Self NO Classification Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
 Description: TCR PN Routine Monitoring Violation 11/2007 - Failure to post public notice for not collecting any routine monitoring sample(s).

3

Date: 02/21/2008 (723052) CN603436692  
 Self NO Classification Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
 Description: TCR Routine Monitoring Violation 12/2007 - Failure to collect any routine monitoring sample(s).

Self NO Classification Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
 Description: TCR PN Routine Monitoring Violation 12/2007 - Failure to post public notice for not collecting any routine monitoring sample(s).

4

Date: 03/11/2008 (723054) CN603436692  
 Self NO Classification Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
 Description: TCR Routine Monitoring Violation 01/2008 - Failure to collect any routine monitoring sample(s).

Self NO Classification Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
 Description: TCR PN Routine Monitoring Violation 01/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

5

Date: 04/16/2008 (723056) CN603436692  
 Self NO Classification Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
 Description: TCR Routine Monitoring Violation 02/2008 - Failure to collect any routine monitoring sample(s).

Self NO Classification Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
 Description: TCR PN Routine Monitoring Violation 02/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

6

Date: 04/29/2008 (723235) CN603436692  
 Self NO Classification Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
 Description: TCR Routine Monitoring Violation 03/2008 - Failure to collect any routine monitoring sample(s).

Self NO Classification Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
 Description: TCR PN Routine Monitoring Violation 03/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

7

Date: 05/22/2008 (723237) CN603436692  
 Self NO Classification Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
 Description: TCR Routine Monitoring Violation 04/2008 - Failure to collect any routine monitoring sample(s).

Self NO Classification Moderate



Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
Description: TCR PN Routine Monitoring Violation 04/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

8

Date: 06/27/2008 (723240) CN603436692

Self Report? NO Classification Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
Description: TCR Routine Monitoring Violation 05/2008 - Failure to collect any routine monitoring sample(s).  
Self Report? NO Classification Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
Description: TCR PN Routine Monitoring Violation 05/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

9

Date: 07/31/2008 (723246) CN603436692

Self Report? NO Classification Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
Description: TCR Routine Monitoring Violation 06/2008 - Failure to collect any routine monitoring sample(s).  
Self Report? NO Classification Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
Description: TCR PN Routine Monitoring Violation 06/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

10

Date: 09/03/2008 (723251) CN603436692

Self Report? NO Classification Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
Description: TCR Routine Monitoring Violation 07/2008 - Failure to collect any routine monitoring sample(s).  
Self Report? NO Classification Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
Description: TCR PN Routine Monitoring Violation 07/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

11

Date: 10/10/2008 (723255) CN603436692

Self Report? NO Classification Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
Description: TCR Routine Monitoring Violation 08/2008 - Failure to collect any routine monitoring sample(s).  
Self Report? NO Classification Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
Description: TCR PN Routine Monitoring Violation 08/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

12

Date: 11/19/2008 (723258) CN603436692

Self Report? NO Classification Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
Description: TCR Routine Monitoring Violation 09/2008 - Failure to collect any routine monitoring sample(s).  
Self Report? NO Classification Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
Description: TCR PN Routine Monitoring Violation 09/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

13

Date: 12/09/2008 (723266) CN603436692

Self Report? NO Classification Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
Description: TCR Routine Monitoring Violation 10/2008 - Failure to collect any routine monitoring sample(s).  
Self Report? NO Classification Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
Description: TCR PN Routine Monitoring Violation 10/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION AGAINST  
KBL MANAGEMENT, INC.;  
RN102320991**

§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2009-0126-PWS-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding KBL Management, Inc. ("KBL") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, represented by the Litigation Division, and KBL, presented this agreement to the Commission.

KBL understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, KBL agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon KBL.

The Commission makes the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. KBL owns and operates a public water supply system located at 2701 Prairie Creek Road, Marble Falls, Burnet County, Texas (the "Facility").
2. The Facility provides water for human consumption, has 16 service connections, and serves at least 25 people per day for at least 60 days per year. As such, the Facility is a public water supply system as defined in 30 TEX. ADMIN. CODE § 290.38(63).
3. During a record review conducted on January 1, 2009, a TCEQ Central Office investigator documented that KBL failed to collect routine coliform samples for the months of October, November and December 2007, and January through December 2008; and failed to provide public notice of the failure to collect those samples.

4. KBL received notice of the violations on or about January 17, 2009.
5. The Executive Director recognizes that KBL has sold the facility as of July 1, 2009.

#### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, KBL is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, KBL failed to collect routine coliform samples for the months of October, November and December 2007, and January through December 2008; and failed to provide public notice of the failure to collect those samples, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B) and TEX. HEALTH & SAFETY CODE § 341.033(d).
3. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against KBL for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of seven thousand eighteen dollars (\$7,018.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth TEX. HEALTH & SAFETY CODE § 341.049. KBL has paid one thousand five hundred one dollars (\$1,501.00) of the administrative penalty. The remaining amount of five thousand five hundred seventeen dollars (\$5,517.00) of the administrative penalty shall be payable in one monthly payment of one hundred seventy-nine dollars (\$179.00) and thirty-four subsequent monthly payments of one hundred fifty-seven dollars (\$157.00) each, pursuant to 30 TEX. ADMIN. CODE § 70.9(a). The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be remitted not later than 30 days following the due date of the previous payment. If KBL fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of KBL to meet the payment schedule of this Agreed Order constitutes the failure by KBL to timely and satisfactorily comply with all of the terms of this Agreed Order.

#### ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS  
that:

1. KBL is assessed an administrative penalty in the amount of seven thousand eighteen dollars (\$7,018.00) as set forth in Conclusion of Law No. 4 for violations of TCEQ rules and state statutes.

The payment of this administrative penalty and KBL's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: KBL Management, Inc.; Docket No. 2009-0126-PWS-E" to:

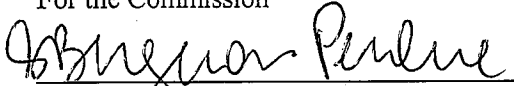
Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon KBL.
3. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by KBL shall be made in writing to the Executive Director. Extensions are not effective until KBL receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
4. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to KBL if the Executive Director determines that KBL has not complied with one or more of the terms or conditions in this Agreed Order.
5. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
6. This Agreed Order, issued by the Commission, shall not be admissible against KBL in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date is the date of hand-delivery of this Agreed Order to KBL, or three days after the date on which the Commission mails notice of this Agreed Order to KBL, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

10/9/2009

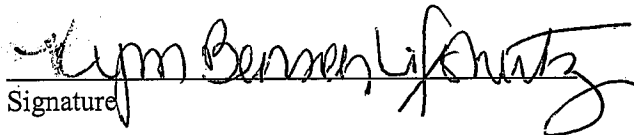
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of KBL Management, Inc. I represent that I am authorized to agree to the attached Agreed Order on behalf of KBL Management, Inc., and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on KBL's compliance history;
- Greater scrutiny of any permit applications submitted by KBL;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against KBL;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution.

  
Signature

9-3-09

Date

Kym Benson Lifshutz

(printed)

Authorized Representative  
KBL Management, Inc.

Director and President

Title